

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Brian Whitaker,**

Plaintiff,

v.

**Kearny SF I-Tea LLC**, a California  
Limited Liability Company; and  
Does 1-10,

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Brian Whitaker complains of Kearny SF I-Tea LLC, a California Limited Liability Company; and Does 1-10 ("Defendants"), and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He suffers from a C-4 spinal cord injury. He is a quadriplegic. He uses a wheelchair for mobility.

2. Defendant Kearny SF I-Tea LLC owned i-Tea located at or about 253 Kearny Street, San Francisco, California, in September 2019.

3. Defendant Kearny SF I-Tea LLC owns i-Tea located at or about 253

1 Kearny Street, San Francisco, California, currently.

2 4. Plaintiff does not know the true names of Defendants, their business  
3 capacities, their ownership connection to the property and business, or their  
4 relative responsibilities in causing the access violations herein complained of,  
5 and alleges a joint venture and common enterprise by all such Defendants.  
6 Plaintiff is informed and believes that each of the Defendants herein,  
7 including Does 1 through 10, inclusive, is responsible in some capacity for the  
8 events herein alleged, or is a necessary party for obtaining appropriate relief.  
9 Plaintiff will seek leave to amend when the true names, capacities,  
10 connections, and responsibilities of the Defendants and Does 1 through 10,  
11 inclusive, are ascertained.

12  
13 **JURISDICTION & VENUE:**

14 5. The Court has subject matter jurisdiction over the action pursuant to 28  
15 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
16 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

17 6. Pursuant to supplemental jurisdiction, an attendant and related cause  
18 of action, arising from the same nucleus of operative facts and arising out of  
19 the same transactions, is also brought under California's Unruh Civil Rights  
20 Act, which act expressly incorporates the Americans with Disabilities Act.

21 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
22 founded on the fact that the real property which is the subject of this action is  
23 located in this district and that Plaintiff's cause of action arose in this district.

24  
25 **FACTUAL ALLEGATIONS:**

26 8. Plaintiff went to i-Tea in September 2019 with the intention to avail  
27 himself of its goods, motivated in part to determine if the defendants comply  
28 with the disability access laws.

1       9. i-Tea is a facility open to the public, a place of public accommodation,  
2 and a business establishment.

3       10. Unfortunately, on the date of the plaintiff's visit, the defendants failed  
4 to provide accessible dining surfaces.

5       11. On information and belief, the defendants currently fail to provide  
6 accessible dining surfaces.

7       12. Plaintiff personally encountered these barriers.

8       13. By failing to provide accessible facilities, the defendants denied the  
9 plaintiff full and equal access.

10       14. The failure to provide accessible facilities created difficulty and  
11 discomfort for the Plaintiff.

12       15. The defendants have failed to maintain in working and useable  
13 conditions those features required to provide ready access to persons with  
14 disabilities.

15       16. The barriers identified above are easily removed without much  
16 difficulty or expense. They are the types of barriers identified by the  
17 Department of Justice as presumably readily achievable to remove and, in fact,  
18 these barriers are readily achievable to remove. Moreover, there are numerous  
19 alternative accommodations that could be made to provide a greater level of  
20 access if complete removal were not achievable.

21       17. Plaintiff will return to i-Tea to avail himself of its goods and to determine  
22 compliance with the disability access laws once it is represented to him that i-  
23 Tea and its facilities are accessible. Plaintiff is currently deterred from doing  
24 so because of his knowledge of the existing barriers and his uncertainty about  
25 the existence of yet other barriers on the site. If the barriers are not removed,  
26 the plaintiff will face unlawful and discriminatory barriers again.

27       18. Given the obvious and blatant nature of the barriers and violations  
28 alleged herein, the plaintiff alleges, on information and belief, that there are

1 other violations and barriers on the site that relate to his disability. Plaintiff will  
 2 amend the complaint, to provide proper notice regarding the scope of this  
 3 lawsuit, once he conducts a site inspection. However, please be on notice that  
 4 the plaintiff seeks to have all barriers related to his disability remedied. See  
 5 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
 6 encounters one barrier at a site, he can sue to have all barriers that relate to his  
 7 disability removed regardless of whether he personally encountered them).

8  
 9 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
 10 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
 11 Defendants.) (42 U.S.C. section 12101, et seq.)

12 19. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
 13 again herein, the allegations contained in all prior paragraphs of this  
 14 complaint.

15 20. Under the ADA, it is an act of discrimination to fail to ensure that the  
 16 privileges, advantages, accommodations, facilities, goods and services of any  
 17 place of public accommodation is offered on a full and equal basis by anyone  
 18 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
 19 § 12182(a). Discrimination is defined, inter alia, as follows:

- 20 a. A failure to make reasonable modifications in policies, practices,  
 21 or procedures, when such modifications are necessary to afford  
 22 goods, services, facilities, privileges, advantages, or  
 23 accommodations to individuals with disabilities, unless the  
 24 accommodation would work a fundamental alteration of those  
 25 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 26 b. A failure to remove architectural barriers where such removal is  
 27 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
 28 defined by reference to the ADA Standards.

1 c. A failure to make alterations in such a manner that, to the  
 2 maximum extent feasible, the altered portions of the facility are  
 3 readily accessible to and usable by individuals with disabilities,  
 4 including individuals who use wheelchairs or to ensure that, to the  
 5 maximum extent feasible, the path of travel to the altered area and  
 6 the bathrooms, telephones, and drinking fountains serving the  
 7 altered area, are readily accessible to and usable by individuals  
 8 with disabilities. 42 U.S.C. § 12183(a)(2).

9 21. When a business provides facilities such as dining surfaces, it must  
 10 provide accessible dining surfaces.

11 22. Here, accessible dining surfaces have not been provided.

12 23. The Safe Harbor provisions of the 2010 Standards are not applicable  
 13 here because the conditions challenged in this lawsuit do not comply with the  
 14 1991 Standards.

15 24. A public accommodation must maintain in operable working condition  
 16 those features of its facilities and equipment that are required to be readily  
 17 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

18 25. Here, the failure to ensure that the accessible facilities were available  
 19 and ready to be used by the plaintiff is a violation of the law.  
 20

21 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
 22 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
 23 Code § 51-53.)

24 26. Plaintiff repleads and incorporates by reference, as if fully set forth  
 25 again herein, the allegations contained in all prior paragraphs of this  
 26 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
 27 that persons with disabilities are entitled to full and equal accommodations,  
 28 advantages, facilities, privileges, or services in all business establishment of

1 every kind whatsoever within the jurisdiction of the State of California. Cal.  
2 Civ. Code §51(b).

3 27. The Unruh Act provides that a violation of the ADA is a violation of the  
4 Unruh Act. Cal. Civ. Code, § 51(f).

5 28. Defendants' acts and omissions, as herein alleged, have violated the  
6 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's  
7 rights to full and equal use of the accommodations, advantages, facilities,  
8 privileges, or services offered.

9 29. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
10 discomfort or embarrassment for the plaintiff, the defendants are also each  
11 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
12 (c).)

13  
14 **PRAYER:**

15 Wherefore, Plaintiff prays that this Court award damages and provide  
16 relief as follows:

17 1. For injunctive relief, compelling Defendants to comply with the  
18 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
19 plaintiff is not invoking section 55 of the California Civil Code and is not  
20 seeking injunctive relief under the Disabled Persons Act at all.

21 2. Damages under the Unruh Civil Rights Act, which provides for actual  
22 damages and a statutory minimum of \$4,000 for each offense.  
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28

1           3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
2 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

3  
4 Dated: October 1, 2019

CENTER FOR DISABILITY ACCESS

5  
6 By:



7  
8 Amanda Seabock, Esq.  
Attorney for plaintiff